

Appl. No. 10/727,231
Atty. Docket No. 7682MC2
Amdt. dated 01/14/2005
Reply to Office Action of 10/20/2004
Customer No. 27752

REMARKS

Claim Status

Claims 1-25, 27-31, 33 and 35-58 are pending in the present application. No additional claims fee is believed to be due.

Claims 26, 32, and 34 have been withdrawn as a result of a restriction requirement.

It is believed these changes do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested.

Response to Requirement for Restriction of Inventions

The Examiner has required, under 35 USC §121, election of a single disclosed invention for prosecution on the merits. A provisional election with traverse was made via telephone with Cindy Clay on June 1, 2004 to prosecute the invention of Group I. This hereby confirms the election to prosecute the invention designated in the Office Action as Invention I. This election is made without traverse. Claims 1-25, 27-31, 33, and 35-58 are drawn to this invention. Claims 26, 32, and 34 have been canceled by this amendment as being drawn to a non-elected invention.

Double Patenting

Claims 1-25, 27-31, 33, 35 and 36 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of Claims 1-25, 27-31, 33 35, and 36 of copending U.S. Application No. 10/677,868. U.S. Application No. 10/677,868 was expressly abandoned on December 3, 2003. Therefore, the rejection under 35 U.S.C. 101 is rendered moot by this previous action.

Claims 1, 25, 27, 33 and 58 are rejected under the judicially created doctrine of obvious-type double patenting over Claims 14 of U.S. Patent No. 6, 153, 208. The Examiner acknowledged that the claims are not identical. The Office Action states that although the conflicting claims are not identical, they are not patentably distinct from each other because both articles comprise a water insoluble, two layer laminate, a lathering surfactant, and a conditioning component. The Office Actions states that the substrates as claimed by 6,153, 208 and the Applicant are not distinct since the substrate

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is claimed by properties which do not limit or exclude either from being made of the same two layers as the other substrate.

According to Section 804 of the MPEP: Any obvious-type double patenting rejection should make clear:

- (A) The difference between the inventions defined by the conflicting claims-a claim in the patent compared to a claim in the application; and
- (B) The reasons why a person of ordinary skill in the art would conclude that the invention defined in the claim in issue an obvious variation of the invention defined in the claim.

In addition, the Federal Circuit has held that the Examiner's showing of obviousness must follow the analysis used to establish a *prima facie* case of obviousness. *In re Longi*, 759 F.2d 887, 225 USPQ 645, 651 (Fed. Cir 1985)

Applicants respectfully submit that the obviousness type-double patenting rejection is improper because the Examiner made a showing of obviousness or established a *prima facie* case of obviousness. To establish a *prima facie* case of obviousness under 35 U.S.C. §103(a), all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974); MPEP §2143.03. In the present case, the Examiner has not shown that all of the claim limitations are taught or suggested by McAtee, et Al. Thus, the Examiner's rejection is improper.

A *prima facie* case of obviousness has not been met because the prior art references do not teach or suggest all of the claim limitations in Claim 1, 25, 27, and 33. For example, the reference does not teach or suggest a substantially dry, disposable, multilayered personal care article comprising a **batting layer** comprising a composite material. As well, the reference does not teach or suggest a cleansing component disposed adjacent to the water insoluble substrate, wherein the component comprises **from about 10% to about 1000%, by weight of the water insoluble substrate, of a lathering surfactant**. Nor does the reference teach or suggest a therapeutic benefit component, disposed adjacent to said water insoluble substrate, wherein said component comprises from about 10% to about 1000%, by weight of the water insoluble substrate, of a therapeutic benefit agent.

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Therefore, McAtee, et al. does not teach or suggest each and every element within Claim 1, 25, 27 and 33. Therefore, the reference does not render Claims 1, 25, 27, 33 and 58 obvious under 35 U.S.C. § 103. Thus, the Examiner's obviousness-type double patenting rejection is improper.

Claims 1-5, 9-13, 16-18, 21-25, 27-31, 33 35-37, 39-48, and 54-58 are provisionally rejected under the judicially created doctrine of obvious type double patenting over claims 1-7, 9, 10, 12, 14, and 16-19 of U.S. Patent No. 6,267,975. The Examiner acknowledged that the claims are not identical. The Office Action states that although the conflicting claims are not identical, they are not patentably distinct from each other because they are drawn to a two layer water insoluble substrate, comprising a cleaning component and therapeutic component of both. The Office Actions states that the substrates are claimed based on different properties that do not exclude the water insoluble substrate in 6,267,975 from also having properties claimed in Applicant's application.

According to Section 804 of the MPEP: Any obvious type double patenting rejection should make clear:

- (A) The difference between the inventions defined by the conflicting claims-a claim in the patent compared to a claim in the application; and
- (B) The reasons why a person of ordinary skill in the art would conclude that the invention defined in the claim in issue an obvious variation of the invention defined in the claim.

In addition, the Federal Circuit has held that the Examiner's showing of obviousness must follow the analysis used to establish a *prima facie* case of obviousness. *In re Longi*, 759 F.2d 887,225 USPQ 645, 651(Fed. Cir 1985).

Applicants respectfully submit that the obviousness type-double patenting rejection is improper because the Examiner has not made a showing of obviousness or established a *prima facie* case of obviousness. To establish a *prima facie* case of obviousness under 35 U.S.C. §103(a), all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974); MPEP §2143.03. In the present case, the Examiner has not shown that all of the claim

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limitations are taught or suggested by McAtee, et al. Thus, the Examiner's rejection is improper.

A *prima facie* case of obviousness has not been met because the prior art references do not teach or suggest all of the claim limitations in Claim 1, 25, 27, and 33. For example, the reference does not teach or suggest a substantially dry, disposable, multilayered personal care article comprising a **batting layer** comprising a composite material.

Therefore, Smith, et al. does not teach or suggest each and every element within Claim 1, 25, 27 and 33. Therefore, the reference does not render Claims 1, 25, 27, 33 and 58 obvious under 35 U.S.C. § 103. Thus, the Examiner's obviousness-type double patenting rejection is improper.

Rejection under 35 USC §112, Second Paragraph

Claims 5-8, 11 and 43 3 is rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the Office Action points to two phrases, "batting layer composite material" in Claim 5 and 7 and "nonwoven" material in Claims 11, and 43. Specifically, Claims 5 - 8 are rejected because that the term "batting layer composite material" is used by the claim to mean a material formed from various substrates including form layers, polymeric nets and films, while the accepted meaning is "a soft bulky assembly of fibers." (10/20/2004 First Rejection, paragraph 14) As well, Claims 11 and 42 are rejected since Applicants recite that nonwovens can be made of films, foams, sponges and scrims. The Office Action states that "by definition a nonwoven material is a fibrous material produced by chemically, thermally or mechanically bonding fibers together by means other than weaving or knitting" and "materials including films and foams do not by definition qualify as nonwoven materials." (10/20/2004 First Rejection, Paragraph, 15). Applicants respectfully disagree with the Examiner's conclusions. Furthermore, the Examiner has not provided any factual basis for such a conclusion.

In rejecting a claim under the second paragraph of 35 U.S.C. §112, it is incumbent upon the Examiner to establish that one of ordinary skill in the pertinent art, when reading the claims in light of the supporting specification, would not have been able to ascertain

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with a reasonable degree of precision and clarity the particular area set out and circumscribed by the claims. *Ex parte Wu*, 10 USPQ2d 2031, 2033 (B.P.A.I. 1989); *In re Hammack*, 427 F.2d 1378, 166 USPQ 204 (C.C.P.A. 1970). Thus, the Examiner has the burden of providing reasons why the terminology is indefinite or would not readily be understood by those of ordinary skill in the art.

The Examiner has not properly established that the meaning of Claims 5, 7, 11 and 43 is not reasonably ascertainable to one of ordinary skill in the art in view of the specification. The Examiner has not explained why one skilled in the art, in view of the specification, would not understand what is meant by the claim language of Claim 5, 7, 11 and 43.

Applicants respectfully submit that Claim 5, 7, 11 and 43 are definite and that one of ordinary skill in the art would readily ascertain what is claimed. Notably, that the recited batting material can be comprised of a composite material and that nonwovens can be films and foams. Accordingly, the Examiner's rejection is improper.

Rejection Under 35 USC §103(a) Over Haq in view of Hasenoehtl et al.

Claims 1, 2, 5-25, 27-31, 33, 37-40, and 43-58 are been rejected under 35 USC §103(a) as being unpatentable over Haq (U.S. Patent No. 4,515,703) in view of Hasenoehtl et al. (WO 99/21532).

Independent Claim 1, and thus Claims 2, 5-24 and 37 which depend therefrom, recites a substantially dry, disposable, multilayered personal care article suitable for cleansing, said article comprising: a water insoluble substrate comprising: a batting layer comprising a composite material; a nonwoven layer which is disposed adjacent to said batting layer; and a cleansing component disposed adjacent to said water insoluble substrate, wherein said component comprises from about 10% to about 1000%, by weight of the water insoluble substrate, of a lathering surfactant.

Independent, Claim 25, and thus Claims 38-40 and 43-58 which depend therefrom, recites, a substantially dry, disposable, multilayered personal care article suitable for cleansing, said article comprising: a water insoluble substrate comprising: a batting layer ; a nonwoven layer which is disposed adjacent to said batting layer; and a cleansing component disposed adjacent to said water insoluble substrate, wherein said

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component comprises from about 10% to about 1000%, by weight of the water insoluble substrate, of a lathering surfactant.

Independent Claim 27, and thus Claims 28-31 which depend therefrom recites, a substantially dry, disposable personal care article suitable for conditioning, said article comprising: a water insoluble substrate comprising: a batting layer comprising a composite material; and a nonwoven layer which is disposed adjacent to said batting layer; and a therapeutic benefit component, disposed adjacent to said water insoluble substrate, wherein said component comprises from about 10% to about 1000%, by weight of the water insoluble substrate, of a therapeutic benefit agent.

Independent Claim 33 recites a substantially dry, disposable personal care article suitable for both cleansing and conditioning, said article comprising: a water insoluble substrate comprising: a batting layer comprising a composite material; and a nonwoven layer which is disposed adjacent to said batting layer; a cleansing component disposed adjacent to said batting layer, wherein said component comprises from about 10% to about 1000%, by weight of the water insoluble substrate, of a lathering surfactant; and a therapeutic benefit component, disposed adjacent to said water insoluble substrate, wherein said component comprises from about 10% to about 1000%, by weight of the water insoluble substrate, of a therapeutic benefit agent.

Applicants respectfully submit that the obviousness rejection is improper because the Examiner has not established a *prima facie* case of obviousness. To establish a *prima facie* case of obviousness under 35 U.S.C. §103(a), all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974); MPEP §2143.03. In the present case, the Examiner has not shown that all of the claim limitations are taught or suggested by Haq in view of Hasenoehtl et al. Thus, the Examiner's rejection is improper.

The Office Actions states that Haq discloses a wiping material suitable for cleaning surfaces comprising a substrate material having a first material having a first and second layer bonded together to create a plurality of compartments between at least some of the compartments containing an active material and perforations to release the active material s through. The Office Action admits that Haq fails to teach the amount of active solution added to the wipe. The Office actions state that. The Office action states that

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Hasenoechl, et al is drawn to a multi-layered wipe substrate containing a cleaning composition applied to the substrate including 0.5 to 12.5% by the weight of the substrate, a lathering agent. The Office Action concludes it would have been obvious to one of ordinary skill in the art to add various components including lathering surfactants and therapeutic benefit agents as disclosed by Hasenoechl, et al. to the wipe taught by Haq in the amount ranging from 0.5% to 99% as disclosed by Hasenoechl, et al. Further, it would have been obvious to one of ordinary skill in the art at the time the invention was made to choose to add from about 10 to about 100% of the cleaning composition, by weight of the substrate, since it was held that where the general conditions of the claim are disclosed in the prior art, discovering optimum or workable ranges involves only routine skill in the art. The Office Action further concludes that one of ordinary skill in the art would be motivated to add enough cleanser so that the wipe would be able to clean a large surface area before throwing the wipe away.

A *prima facie* case of obviousness has not been met because the prior art references do not teach or suggest all of the claim limitations in Claim 1, 25, 27, and 33. For example, the references do not teach or suggest a substantially dry, disposable, multilayered personal care article comprising a **batting layer** comprising a composite material. As well, the references do not teach or suggest a cleansing component disposed adjacent to the water insoluble substrate, wherein the component comprises from about 10% to about 1000%, by weight of the water insoluble substrate, of a **lathering surfactant**. In fact, Hasenoechl at its broadest range discloses 0.5% to 12.5% lathering surfactant. (See Hasenoechl, page 20, line 14-16). Nor do the references teach or suggest a therapeutic benefit component, disposed adjacent to said water insoluble substrate, wherein said component comprises from about 10% to about 1000%, by weight of the water insoluble substrate, of a therapeutic benefit agent.

Therefore, the combination of Haq and Hasenoechl, et al. does not teach or suggest each and every element within Claim 1, 25, 27 and 33. Therefore, the combination of references, even if proper, does not render Claims 1, 2, 5-25, 27-31, 33, 37-40, and 43-58 obvious under 35 U.S.C. § 103.

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Rejection Under 35 USC §103(a) Over Haq and Hasenoehrl et al. in view of Horn

Claims 3, 4, 41 and 42 are been rejected under 35 USC §103(a) as being unpatentable over Haq (U.S. Patent No. 4,515,703) and Hasenoehrl et al. (WO 99/21532) as applied to Claims 1 and 25 above, and in further view if Horn (U.S. Patent No.5,302,446).

Independent Claim 1, and thus Claims 3 and 4 which depend therefrom, recites a substantially dry, disposable, multilayered personal care article suitable for cleansing, said article comprising: a water insoluble substrate comprising: a batting layer comprising a composite material; a nonwoven layer which is disposed adjacent to said batting layer; and a cleansing component disposed adjacent to said water insoluble substrate, wherein said component comprises from about 10% to about 1000%, by weight of the water insoluble substrate, of a lathering surfactant.

Independent, Claim 25, and thus Claims 41 and 42 which depend therefrom, recites, a substantially dry, disposable, multilayered personal care article suitable for cleansing, said article comprising: a water insoluble substrate comprising: a batting layer ; a nonwoven layer which is disposed adjacent to said batting layer; and a cleansing component disposed adjacent to said water insoluble substrate, wherein said component comprises from about 10% to about 1000%, by weight of the water insoluble substrate, of a lathering surfactant.

Applicants respectfully submit that the obviousness rejection is improper because the Examiner has not established a *prima facie* case of obviousness. To establish a *prima facie* case of obviousness under 35 U.S.C. §103(a), all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974); MPEP §2143.03. In the present case, the Examiner has not shown that all of the claim limitations are taught or suggested by Haq and Hasenoehrl et al in view of Horn. Thus, the Examiner's rejection is improper

The Office Actions states that the features of Haq and Hasenoehrl, et al. have been disclosed above. The Office action states that Haq fails to teach that using a multi-component fiber in the batting layer. The Office action states that Horn discloses that it is known to make multi-layered skin care wipes with bicomponent materials. The Office action states that it would have been obvious to one skilled in the art to substitute

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bicomponent fibers in for the fibers in the batting layer to provide the batting layer with an extra strength and structural integrity by thermally bonding the fibers together.

A *prima facie* case of obviousness has not been met because the prior art references do not teach or suggest all of the claim limitations in Claim 1, 25, 27, and 33. First, the references **do not teach or suggest** a substantially dry, disposable, multilayered personal care article comprising a **batting layer** comprising a composite material. Moreover, the references **do not teach or suggest** a cleansing component disposed adjacent to the water insoluble substrate, wherein the component comprises from about **10% to about 1000%, by weight of the water insoluble substrate, of a lathering surfactant**. In fact, Hasenoechl et al., at its broadest range discloses 0.5% to 12.5% lathering surfactant. (See Hasenoechl, page 20, line 14-16).

Therefore, the combination of Haq and Hasenoechl, et al in view of Horn. does not teach or suggest each and every element within Claim 1 and 25. Therefore, the combination of references, even if proper, does not render Claims 3, 4, 41 and 42 obvious under 35 U.S.C. § 103.

Rejection Under 35 USC §103(a) Over Haq and Hasenoechl et al. in view of Martin, et al.

Claims 1, 2, 5-25, 27-31, 33, 37-40, and 43-58 are been rejected under 35 USC §103(a) as being unpatentable over Haq (U.S. Patent No. 4,515,703) and Hasenoechl et al. (WO 99/21532)) as applied to Claims 1 and 27 above, and in further view if Martin (U.S Patent No.5,702,992).

Independent Claim 1, and thus Claim 35 which depends therefrom, recites a substantially dry, disposable, multilayered personal care article suitable for cleansing, said article comprising: a water insoluble substrate comprising: a batting layer comprising a composite material; a nonwoven layer which is disposed adjacent to said batting layer, and a cleansing component disposed adjacent to said water insoluble substrate, wherein said component comprises from about 10% to about 1000%, by weight of the water insoluble substrate, of a lathering surfactant.

Independent Claim 27, and thus Claim 36 which depends therefrom recites, a substantially dry, disposable personal care article suitable for conditioning, said article comprising: a water insoluble substrate comprising: a batting layer comprising a

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composite material; and a nonwoven layer which is disposed adjacent to said batting layer; and a therapeutic benefit component, disposed adjacent to said water insoluble substrate, wherein said component comprises from about 10% to about 1000%, by weight of the water insoluble substrate, of a therapeutic benefit agent.

Applicants respectfully submit that the obviousness rejection is improper because the Examiner has not established a *prima facie* case of obviousness. To establish a *prima facie* case of obviousness under 35 U.S.C. §103(a), all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974); MPEP §2143.03. In the present case, the Examiner has not shown that all of the claim limitations are taught or suggested by Haq in view of Hasenoehrl et al. Thus, the Examiner's rejection is improper.

The Office Actions states that the features of Haq and Hasenoehrl, et al. have been disclosed above. The Office Action states that Haq fails to teach packaging the personal care article with other substrates. The Office Action states that martin, et al. is drawn to disposable cloths impregnated with cleansing solution. The Office Action states that it would be obvious to one skilled in the art to package the cleansing article taught by Haq in a personal care kit so that the cleansing articles can be employed in hospitals and locations away from running water to quickly clean a person's hands and face or entire body.

A *prima facie* case of obviousness has not been met because the prior art references do not teach or suggest all of the claim limitations in Claim 1, 25, 27, and 33. For example, the references do not teach or suggest a substantially dry, disposable, multilayered personal care article comprising a **batting layer** comprising a composite material. As well, the references do not teach or suggest a cleansing component disposed adjacent to the water insoluble substrate, wherein the component comprises from about **10% to about 1000%, by weight of the water insoluble substrate, of a lathering surfactant**. Nor do the references teach or suggest a therapeutic benefit component, disposed adjacent to said water insoluble substrate, wherein said component comprises from about 10% to about 1000%, by weight of the water insoluble substrate, of a therapeutic benefit agent.

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In fact, Hasenoehtl at its broadest range discloses 0.5% to 12.5% lathering surfactant. (See Hasenoehtl, page 20, line 14-16). Therefore, the combination of Haq and Hasenoehtl, et al. does not teach or suggest each and every element within Claim 1 and 27. Therefore, the combination of references, even if proper, does not render Claims 35 and 36 obvious under 35 U.S.C. § 103.

Conclusion

In light of the above remarks, it is requested that the Examiner reconsider and withdraw the rejection under double patenting, 35 USC §112, and 35 USC §103(a). Early and favorable action in the case is respectfully requested.

This response represents an earnest effort to place the application in proper form and to distinguish the invention as now claimed from the applied references. In view of the foregoing, reconsideration of this application, entry of the amendments presented herein, and allowance of Claims 1-25, 27-31, 33 and 35-58 is respectfully requested.

Respectfully submitted,

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January 14, 2005

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